

UBUSHINJACYAHA v MAGARA N'ABANDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INJUST/RP 00001/2020/SC (Ntezilyayo, P.J, Cyanzayire, Hitiyaremye, Rukundakuvuga na Muhumuza, J.) 18 Mutarama 2021]

Gusubirishamo urubanza ku mpamvu z'akarengane – uwemerewe gusubirishamo ku mpamvu z'akarengane. – Inzira y'akarengane ni inzira idasanzwe yemerewe umuburanyi warenganyijwe ku buryo bugaragarira buri wese, abisabye mu buryo no mu nzira biteganywa n'amategeko, byemejwe n'inzego zibifitiye ububasha zimaze kubisuzuma, binyuranye nibikorwa muzindi nzira z'ubujurire. Ababuranyi bataciye muri izo nzira ntibashobora guhabwa uburenganzira bwo kuririra ku isubirwamo ryasabwe n'abandi rikemerwa, ngo bagire ibyo basaba ko bihinduka ku rubanza batasabye ko rusubirwamo kuko ubwo burenganzira baba barabwibujije.

Gusubirishamo urubanza ku mpamvu z'akarengane – Guhindura icyemezo cyafatiwe abatarasabye gusubirishamo ku mpamvu z'akarengane. – Icyemezo cyafatiwe abatarasabye gusubirishamo ku mpamvu z'akarengane, bakuririra ku busabe bw'abandi, gishobora guhinduka gusa iyo urukiko rusanze hari ubusobekerane ku byerekeye imikorere y'icyaha bahuriyeho n'abasabye gusubirishamo ku mpamvu z'akarengane, ku buryo icyemezo cyafatirwa abareze cyabagiraho ingaruka mu buryo bubafitiye inyungu.

Gusubirishamo urubanza ku mpamvu z'akarengane – Ihinduka ry'icyemezo cya Perezida w'Urukiko rw'Ikirenga – Kuba Perezida yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, ntibibuzza inteko iburanisha gusuzuma ibibazo bidasanzwe, byumvikana nk'ibibazo ndemyagihugu, ikabifataho icyemezo.

Gusubirishamo urubanza ku mpamvu z'akarengane – Imbibi z'ikiburanwa – Imbibi z'ikiburanwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, zigenwa n'icyaburanywe mu rwego rwa mbere, icyaburanywe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, n'imyanzuro y'abasabye ko urubanza rusubirwamo bamaze kubyemererwa na Perezida w'Urukiko rw'Ikirenga

Incamake y'ikibazo: Ubushinjacyaha bwareze mu Rukiko Rwisumbuye rwa Gasabo Karake wari Umuyobozi w'inama y'ubutegetsi w'Ikigo cy'ubwishingizi SONARWA, Mawadza wari Umuyobozi Mukuru wa SONARWA, Bamiika wari Technical Director, Magara Na Kamanzi bagiye basimburana ku mwanya wa Commercial Director na Nzaramba wari Director of Planning and Policy muri Minisiteri y'ibikorwa remezo, bubakurikiranyeho ibyaha bifitanye isano no kunyereza umutungo, gutanga cyangwa kwakira indonke kugira ngo hakorwe ibinyuranyije n'amategeko no kwandika inyandiko zivuga ibintu uko bitari. Urukiko rwaciye urubanza rwemeza ko Bamiika na Magara bahamwa n'icyaha cyo kunyereza umutungo, icyaha cyo gutanga ruswa n'icyaha cyo kwandika inyandiko zitavuga ukuri, rubahanisha igifungo cy'imyaka 7 n'ihazabu y'amafaranga 5.000.000 kuri buri wese; Karake ahamwa n'icyaha cyo kwakira ruswa n'icyaha cyo kunyereza umutungo, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000; Mawadza ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwemeza inyandiko zitavugisha ukuri rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000; Nzaramba ahamwa n'icyaha cyo kwakira ruswa, rumuhanisha igifungo cy'imyaka itanu n'ihazabu y'amafaranga 5.000.000; Kamanzi ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwandika inyandiko zitavugisha ukuri, rumuhanisha igifungo cy'imyaka 4 n'ihazabu y'amafaranga 5.000.000. Runategeka Bamiika, Mawadza, Kamanzi, Karake na Magara gufatanya kwishyura amafaranga yanyerejwe muri Sonarwa.

Bamiika, Mawadza, Kamanzi, Karake na Magara ntibishimiye imikirize y'urubanza, bajuririra Urukiko Rukuru. Urukiko rwemeza ko ubwo bujurire ntashingiro bufite, ruhindura urubanza rwajuririwe gusa ku bijyanye n'igihano cy'igifungo cyahanishijwe buri wese mu baregwa.

Kamanzi na Magara basubirishijemo urwo rubanza ingingo nshya, Urukiko rwemeza ko ikirego cyabo ntashingiro gifite.

Kamanzi na Magara ntibishimiye icyo cyemezo bandikira Perezida w'Urukiko rw'Ubujurire basaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, Perezida w'Urukiko rw'Ubujurire abasubiza ko nta mpamvu iteganywa n'itegeko yatuma urwo rubanza rusubirwamo ku mpamvu z'akarengane.

Na none Kamanzi na Magara ntibanyuzwe nicyo gisubizo bandikira Urwego rw'Umuvunyi bavuga ko muguca urubanza Urukiko Rukuru rwirengagije amategeko bigatuma barengana. Urwego rw'Umuvunyi rwandikiye Perezida w'Urukiko rw'Ikirenga rumusaba ko urubanza rusubirwamo ku mpamvu z'akarengane. Peerezida w'Urukiko rw'Ikirenga yemeje ko urwo rubanza rusubirwamo n'Urukiko rw'Ikirenga.

Ku munsu w'iburanisha uhagarariye Ubushinjacyaha yatanze inzitizi ijyanye no kutakira ubusabe bwa Bamiika, Karake, Mawadza na Nzaramba bwo gusuzuma akarengane ku bibareba kuko batigeze basaba ko imanza batsinzwe zisubirwamo ku mpamvu z'akarengane.

Abo Ubushinjacyaha kwasabye ko gusubirishamo ku mpamvu z'akarengane ikirego cyabo kitakwagirwa, bavuze ko inzitizi Ubushinjacyaha bwatanze ntashingiro ifite, Bavuga ko hakurikijwe ibiteganywa n'itegeko, n'ubwo batasabye ko urubanza batsinzwe rusubirwamo ku mpamvu z'akarengane, itegeko ribaha uburenganzira bwo kuririra ku busabe bw'ababisabye. Bavuga ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane rugomba kuburanishwa mu mizi, ko kandi urubanza rugomba gusubirwamo bundi bushya, rugasa n'aho rutangiye ku rwego rwa mbere, bityo abarubayemo abaturanyi bagasubirana uburenganzira bari bafite icyo gihe. Basaza bavuga ko basanga ari uburenganzira bwabo kuririra ku busaba bwabasubirishijemo ku mpamvu z'akarengane nabo bagasaba kurenganurwa ngo nk'uko byatanzweho umurongo mu rubanza rwaciye n'Urukiko rw'Ikirenga

Kamanzi na Magara bashyigikiye ibyavuzwe n'Ubushinjacyaha bavuga ko abataranyuze mu nzira ziteganywa n'amategeko ngo basabe ko urubanza rwabo rusubirwamo ku mpamvu z'akarengane badashobora kuririra ku busabe bw'abandi, ko bo bishimiye icyemezo cyafashwe.

Incamake y'Icyemezo: 1. Inzira y'akarengane ni inzira idasanzwe yemerewe umuburanyi warenganyijwe ku buryo bugaragarira buri wese, abisabye mu buryo no mu nzira biteganywa n'amategeko, byemejwe n'inzego zibifitiye ububasha zimaze kubisuzuma, binyuranye nibikorwa muzindi nzira z'ubujurire. Abaturanyi bataciye muri izo nzira ntibashobora guhabwa uburenganzira bwo kuririra ku isubirwamo ryasabwe n'abandi rikemerwa, ngo bagire ibyo basaba ko bihinduka ku rubanza batasabye ko rusubirwamo kuko ubwo burenganzira baba barabwibujije, bityo Bamiika, Karake, Mawadza na Nzaramba bakaba abatemerewe kuririrakwisubirishamo ryasabwe n'abandi.

2. Icyemezo cyafatiwe abatarasabye gusubirishamo urubanza ku mpamvu z'akarengane, bakuririra ku busabe bw'abandi, gishobora guhinduka gusa iyo urukiko rusanze hari ubusobekerane ku byerekeye imikorere y'icyaha bahuriyeho n'abasabye gusubirishamo ku mpamvu z'akarengane, ku buryo icyemezo cyafatirwa abareze cyabagiraho ingaruka mu buryo bubafitiye inyungu, bityo ubusabe bwa Bamiika, Karake, Mawadza na Nzaramba bukaba butakwagirwa keretse gusa igihe Urukiko ruzasanga hari ubusobekerane bw'ibiburanwa.

3. Kuba Perezida yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, ntibibuzwa inteko iburanisha gusuzuma ibibazo bidasanzwe, byumvikana nk'ibibazo ndemyagihugu, ikabifataho icyemezo, bityo impaka zishingiye ku kumenya uburenganzira mu rubanza bw' abatarasabye gusubirishamo urubanza ku mpamvu z'akarengane, zikaba zitari impamvu zidasanzwe.

4. Iimbibi z'ikiburanwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, zigenwa n'icyaburanywe mu rwego rwa mbere, icyaburanywe mu rubanza rusabirwa gusubirwamo ku

mpamvu z'akarengane, n'imyanzuro y'abasabye ko urubanza rusubirwamo bamaze kubyemererwa na Perezida w'Urukiko rw'Ikirenga, bityo ibyo Bamiika, Karake, Mawazda na Nzaramba bashingiraho ubusabe bwabo bikaba ari nta shingiro bifite.

**Inzitizi yatanzwe ifite ishingiro,
Iburanisha mu mizi ry'urubanza rizakomeza.**

Amategeko yashyngiweho:

Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 190

Itegeko n° 30/2018 ryo ku wa 29/04/2018 rigena ububasha bw'inkiko, ingingo za 54 kugeza kuya 63

Imanza zifashishijwe

RS/INJUST/RC 00024/2018/SC haburana Ngizweninshuti Albert na Muhima Giovanni, rwaciwe ku wa 21/02/2020.

RS/INJUST/RC 00022/2018/SC rwaciwe ku wa 21/6/2019 haburana Busoro Gervais na Busoro Mugunga,

RS/INJUST/RC 00004/2018/SC rwaciwe ku wa 28/02/2019 haburana Ubushinjacyaha na Mbarushimana Jean de Dieu, Rutayisire Ruhinda Sabbat

Urubanza

I. IMITERERE Y'IKIBAZO

[1] Ubushinjacyaha bwagaragaje ko mu mwaka w'ingengo y'imari wa 2013/2014, Sonarwa yashakishije uburyo bwose yahabwa isoko ry'ubwishingizi bw'ibinyabiziga bya Leta ryatanzwe na Mininfra kuko hari hashize igihe iryo soko ritsindirwa na Cogear. Ubushinjacyaha bwagaragaje ko buri mwaka uko Minisiteri y'ibikorwa remezo (MININFRA) yishyuraga facture y'ubwo bwishingizi, abakozi ba SONARWA nabo bateguraga sheki yo kubikuzwa amafaranga ya komisiyo yo kwishyura uwabafashije kubona iryo soko, zanditseho amazina ya Rutagwabira Barnabas cyangwa Mbabazi Gerard bari aba agents ba SONARWA, kandi ntacyo bayifashije mu kubona iryo soko kubera ko ryatanzwe binyuze mu ipiganwa risesuye (*open tender*).

[2] Ubushinjacyaha bwagaragaje ko mbere y'uko sheki ibikuzwa hakorwaga inyandiko isaba ayo mafaranga, yandikirwaga Umuyobozi Mukuru, yamara gushyirwaho umukono n'abo bireba bose, hagakorwa sheki, ikandikwaho amazina ya Mbabazi Gerard cyangwa Rutagwabira Barnabas nk'abahawe ayo mafaranga, nabo bagasinye kuri izo sheki ko bayakiriye. Nyuma yo kuyabikuzwa, buri wese yahabwaga 15.000Frw, asigaye akohererezwa Nzaramba Stevenson kugira ngo nawe ayagabane n'abo bafatanyije gutanga iryo soko, asagutse abakozi ba SONARWA nabo bakayagabana.

[3] Ubushinjacyaha bwareze mu Rukiko Rwisumbuye rwa Gasabo Karake Mutsinzi Charles wari Umuyobozi w'inama y'ubutegetsu w'Ikigo cy'ubwishingizi SONARWA (*Chairman wa Board*), Mawadza Nhamo wari Umuyobozi Mukuru wa SONARWA (*Managing Director*), Bamiika Rumanyika Herbert (*Technical Director*), Magara Gahakwa John na Kamanzi Charlotte bagiye basimburana ku mwanya wa Commercial Director na Nzaramba Stevenson wari *Director of Planning and Policy* muri Minisiteri y'ibikorwa remezo (MININFRA), bubakurikiranyeho ibyaha bifitanye isano no kunyereza umutungo, gutanga cyangwa kwakira indonke kugira ngo hakorwe ibinyuranyije n'amategeko no kwandika inyandiko zivuga ibintu uko bitari.

[4] Kamanzi Charlotte yarezwe icyaha cyo kwandika abizi inyandiko zivuga ibintu uko bitari n'icyaha cy'ubufatanyacyaha mu cyaha cyo kunyereza umutungo w'Ikigo, Karake Mutsinzi Charles aregwa ubufatanyacyaha mu gutanga impano kugira ngo hakorwe ibinyuranyije n'amategeko n'ubufatanyacyaha mu kunyereza umutungo w'ikigo. Bamiika Rumanyika Herbert, Mawadza Nhamo na Magara Gahakwa John bo barezwe icyaha cyo kwandika babizi inyandiko ivuga ibintu uko bitari, icyaha cyo gutanga indonke kugira ngo hakorwe ibinyuranyije n'amategeko, n'ubufatanyacyaha mu kunyereza umutungo.

[5] Urukiko Rwisumbuye rwa Gasabo, mu rubanza RP 00538/2016/TGI/GSBO rwo ku wa 30/06/2017, rwemeje ko:

a. Bamiika Rumanyika Herbert na Magara Gahakwa John bahamwa n'icyaha cyo kunyereza umutungo, icyaha cyo gutanga ruswa n'icyaha cyo kwandika inyandiko zitavuga ukuri, rubahanisha igifungo cy'imyaka 7 n'ihazabu y'amafaranga 5.000.000 kuri buri wese;

b. Karake Mutsinzi Charles ahamwa n'icyaha cyo kwakira ruswa n'icyaha cyo kunyereza umutungo, rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000;

c. Mawadza Nhamo ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwemeza inyandiko zitavugisha ukuri rumuhanisha igifungo cy'imyaka 5 n'ihazabu y'amafaranga 5.000.000;

d. Nzaramba Stevenson ahamwa n'icyaha cyo kwakira ruswa, rumuhanisha igifungo cy'imyaka itanu n'ihazabu y'amafaranga 5.000.000;

e. Kamanzi Charlotte ahamwa n'icyaha cyo kunyereza umutungo n'icyaha cyo kwandika inyandiko zitavugisha ukuri, rumuhanisha igifungo cy'imyaka 4 n'ihazabu y'amafaranga 5.000.000.

[6] Mutsinzi Charles, Kamanzi Charlotte na Magara Gahakwa John gufatanya kwishyura amafaranga yanyerejwe muri SONARWA angana na 163.843.336 Frw. Rutegeka kandi ko Mbabazi Gerard na Rutagwabira Barnabas bahita barekurwa kuko badahamwa n'ibyaha bashinjwaga.

[7] Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte na Magara Gahakwa John ntibishimiye imikirize y'urwo rubanza, barujuririra mu Rukiko Rukuru, ubujurire bwabo bwandikwa kuri RPA 00669/2017/HC/KIG, RPA 00680/2017/HC/KIG, RPA 00684/2017/HC/KIG, RPA 00685/2017/HC/KIG, RPA 00686/2017/HC/KIG, RPA 00745/2017/HC/KIG.

[8] Ubujurire bwabo bwashyizwe mu rubanza rumwe, ku wa 27/04/2018, Urukiko Rukuru rwemeza ko ubwo bujuriye nta shingiro bufite, ruhindura urubanza rwajuririwe gusa ku bijyanye n'igihano cy'igifungo cyahanishijwe buri wese mu baregwa. Rwahanishije:

a. Bamiika Rumanyika Herbert, Nzaramba Stevenson igifungo cy'imyaka 3 n'ihazabu y'amafaranga 5.000.000 kuri buri wese;

b. Magara Gahakwa John, Mawadza Nhamo, Kamanzi Charlotte na Karake Mutsinzi Charles igifungo cy'imyaka 3 gisubitse mu gihe cy'umwaka umwe (1) n'ihazabu y'amafaranga 5.000.000 kuri buri wese.

Rwategetse Bamiika Rumanyika Herbert, Mawadza Nhamo, Karake Mutsinzi Charles, Kamanzi Charlotte na Magara Gahakwa John gufatanya kwishyura amafaranga yanyerejwe muri SONARWA angana na 163.843.336Frw.

[9] Kamanzi Charlotte na Magara Gahakwa John basubirishijemo urwo rubanza ingingo nshya, ikirego cyandikwa kuri RPA 00658/2018/HC/KIG, RPA 00661/2018/HC/KIG, Urukiko rwemeza ko ikirego cyabo kitakiriwe.

[10] Kamanzi Charlotte na Magara Gahakwa John ntibishimiye icyo cyemezo cyafashwe n'Urukiko Rukuru, bandikira Perezida w'Urukiko rw'Ubujurire, basaba ko urubanza RPA 00658-00661/2018/HC/KIG na RPA 00669/2017/HC/KIG -RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG-RPA00685/2017/HC/KIGRPA00686/2017/HC/KIGRPA00745/2017/HC/KIG rusubirwamo ku mpamvu z'akarengane, ariko nyuma yo gusuzuma ubwo busabe, abasubiza ko nta mpamvu iteganywa n'itegeko yatuma urwo rubanza rusubirwamo ku mpamvu z'akarengane.

[11] Kamanzi Charlotte na Magara Gahakwa John ntibanyuzwe n'icyo gisubizo, bandikira Urwego rw'Umuvunyi bavuga ko mu guca urubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG -RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG-RPA 00745/2017/HC/KIG, Urukiko Rukuru rwirengagije amategeko, bigatuma barengana.

[12] Urwego rw'Umuvunyi nyuma yo gusuzuma ubusabe bwabo, rwandikiye Perezida w'Urukiko rw'Ikirenga ku wa 25/09/2020 rumusaba ko urubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG-RPA 00685/2017/HC/KIG - RPA 00686/2017/HC/KIG - RPA 00745/2017/HC/KIG rwasubirwamo ku mpamvu y'akarengane.

[13] Ku wa 28/09/2020, Perezida w'Urukiko rw'Ikirenga, ashingiye kuri raporo y'Ubugenzuzi Bukuru bw'Inkiko, yemeje ko urwo rubanza rusubirwamo; rwandikwa kuri numero RS/INJUST/RP 00001/2020/SC.

[14] Urubanza rwahamagawe ku wa 26/10/2020, ntirwaburanishwa kubera ko Nzaramba Stevenson, yari yanditse agaragaza impamvu adashobora kwitaba, bituma iburanisha ryimurirwa ku wa 03/11/2020, nabwo ntirwaburanishwa kubera ko Bamiika Rumanyika Herbert yari arwaye, Urukiko rwemeza ko Ubwanditsi bw'Urukiko buzamenyesha indi tariki y'iburanisha.

[15] Iburanisha ryashyizwe ku wa 03/12/2020, uwo munsu ugeze ruburanishwa mu ruhame, Kamanzi Charlotte yunganiwe na Me Musore Gakunzi Valery na Me Asimwe Frank, Magara Gahakwa John yunganiwe na Me Uwizeyimana Jean Baptiste na Me Bugingo John Bosco, Bamiika Rumanyika Herbert ari muri gereza hakoreshejwe ikoranabuhanga, yunganiwe na Me Gashagaza Philbert na Me Nyirangirimana Astérie, Karake Mutsinzi Charles yunganiwe na Me Rutabingwa Athanase, Mawadza Nhamo ahagarariwe¹ na Me Bandora Alfred, Nzaramba Stevenson ari muri gereza hakoreshejwe ikoranabuhanga, yunganiwe na Me Kanyambo Diogène na Me Rutabingwa Athanase naho Ubushinjacyaha buhagarariwe n'Umushinjacyaha ku rwego rw'Igihugu Uwombonye Hirwa Sudi.

[16] Ku ikubitiro, Ubushinjacyaha bwatanze inzitizi ijyanye no kutakira ubusabe bwa Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, Mawadza Nhamo na Nzaramba Stevenson bwo gusuzuma akarengane ku bibareba kuko batigeze basaba ko imanza batsinzwe zisubirwamo ku mpamvu z'akarengane.

[17] Bamiika Rumanyika Herbert, Karake Mutsinzi Charles, na Nzaramba Stevenson n'abunganizi babo, ndetse n'uhagarariye Mawadza Nhamo, bavuze ko iyo nzitizi nta shingiro ifite bashingiye ku ngingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 29/04/2018 rigena ububasha bw'inkiko, iteganya ko iyo Urukiko rw'Ikirenga cyangwa urundi rukiko Perezida w'Urukiko rw'Ikirenga agena rushyikirijwe urubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, rurusuzuma mu mizi bundi bushya abarubayemo ababuranyi bose bahamagajwe. Bavuga ko hakurikijwe ibiteganywa n'iyi ngingo, n'ubwo batasabye ko urubanza batsinzwe rusubirwamo ku mpamvu z'akarengane, itegeko ribaha uburenganzira bwo kuririra ku busabe bw'ababisabye.

¹ Mawadza Nhamo yasabye ko ahagararirwa aho kunganirwa, Urukiko rumaze kusuzuma impamvu yatanze rugasanga zifite ishingiro rurabimwemerera

[18] Kamanzi Charlotte, Magara Gahakwa John n’ababunganira bunze mu byavuzwe n’Ubushinjacyaha bavuga ko abataranyuze mu nzira ziteganywa n’amategeko ngo basabe ko urubanza rwabo rusubirwamo ku mpamvu z’akarengane badashobora kuririra ku busabe bw’abandi, ko bo bishimiye icyemezo cyafashwe.

II. IKIBAZO KIGIZE URUBANZA N’ISESENGURA RYACYO

Kumenya niba abatarasabye ko urubanza rusubirwamo ku mpamvu y’akarengane bashobora kuririra ku busabe bw’abandi bakagira ibyo basaba urukiko ku bibareba

[19] Uhagarariye Ubushinjacyaha avuga ko abari mu rubanza rumwe na Magara Gahakwa John na Kamanzi Charlotte, batakuririra ku busabe bwabo kuko batigeze bagaragaza ko barenganye hakurikijwe ibiteganywa n’ingingo ya 55 igika cya 2 y’Itegeko ryavuzwe haruguru, bakaba batarakurikije inzira amategeko ateganya kugirango barenganurwe, bityo bakaba barivukije uburenganzira bwo gusaba ko urubanza rwabo rusubirwamo ku mpamvu z’akarengane.

[20] Uhagarariye Ubushinjacyaha yasobanuye ko asanga mu mikirize y’urubanza rwahamije ibyaha Nzaramba Stevenson, Bamiika Rumanyika Herbert, Mawadza Nhamo na Karake Mutsinzi Charles, nta karengane kabayemo ku bibareba, ko ariko Urukiko rusanze ari ngombwa bakwumvwa gusa kubyo rwabakeneraho badafaswe nk’ababuranyi.

[21] Me Bugingo John Bosco, Me Uwizeyimana Jean Baptiste na Magara Gahakwa John bunganira bunze mu byavuzwe n’Ubushinjacyaha, bavuga ko abasaba kuririra ku busabe bw’abandi nta nyungu bafite mu rubanza, kuko inyungu y’umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z’akarengane ireberwa mu ngingo ya 55 y’Itegeko n° 30/2018 ryavuzwe haruguru, ikagaragazwa no gutanga ikirego mu gihe giteganywa n’ingingo ya 56 y’iryo Tegeko; ko rero Urukiko rwemeye gusuzuma akarengane ku baburanyi batabisabye rwaba runyuranyije n’izo ngingo. Me Bugingo John Bosco na Me Uwizeyimana Jean Baptiste basanga igituma ababuranyi bose bahamagazwa, ari mu nyungu z’ubutabera kugirango bafashe Urukiko kugera ku kuri.

[22] Me Asiiimwe Frank na Me Musore Gakunzi Valérie bunganira Kamanzi Charlotte bavuga ko kuba Nzaramba Stevenson na bagenzi be batarasabye ko urubanza rwabo rusubirwamo ku mpamvu z’akarengane ari uko bari barishimiye icyemezo bafatiwe. Basobanura ko icyo Umushingamategeko yashatse kumvikanisha mu ngingo ya 63 y’Itegeko n° 30/2018 atari ukugira ngo urubanza rusubirwamo ku mpamvu z’akarengane ku babisabye n’abatarabisabye, ko ahubwo ababayemo ababuranyi bahamagazwa hagamijwe gushaka ukuri ku kibazo Urukiko rwashyikirijwe.

[23] Kamanzi Charlotte we avuga ko hari inzira ziteganywa n’amategeko yanyuzemo asaba ko urubanza rwe rusubirwamo ku mpamvu z’akarengane, akaba asanga ingingo ya 63 y’Itegeko N° 30/2018 ikoresha iyo hari abatangiye izo nzira bakabyemererwa, akaba aribwo abarubayemo ababuranyi bose bahamagarwa bagahabwa ijamba, ko rero Nzaramba Stevenson na bagenzi be bagombaga gukurikiza uburyo buteganyijwe n’amategeko mu gusaba ko urubanza rusubirwamo ku bibareba.

[24] Me Gashagaza Philbert na Me Nyirangirimana Astérie bunganira Bamiika Rumanyika Herbert, bavuga ko iyo Perezida w’Urukiko rw’Ikirenga ategutse ko urubanza rusubirwamo, rusubirwamo rwose, ababaye ababuranyi bose bahamagajwe, akaba ariyo mpamvu Bamiika Rumanyika Herbert nawe yahamagajwe nk’uregwa mu rubanza. Basanga rero nk’uko biteganywa mu ngingo ya 63 y’Itegeko N° 30/2018 ryavuzwe haruguru, urubanza rugomba kuburanishwa bundi bushya, akarengane Bamiika Rumanyika Herbert yagiriwe kagasuzumwa kagakosorwa. Bemeza ko uyu ari nawo murongo wafashwe mu rubanza RS/INJUST/RCOM 00001/2019/SC haburana Ntegeye Bernard na ECOBANK Rwanda Ltd na Banki Nkuru y’u Rwanda (BNR), aho Urukiko

rwavuze ko icyari kigamijwe mu gushyiraho inzira y'akarengane ari ugukosora akarengane gashobora kuboneka mu rubanza bitewe no kwibeshya cyangwa amakosa y'umucamanza ku buryo bugaragarira buri wese kandi nta bundi buryo ako karengane kazakosorwa.

[25] Basobanura ko abahanga bavuga ko ubujurire bukozwe n'uruhande rumwe bugirira akamaro n'urundi ruhande bihuriye ku bibazo bidashobora gutandukanywa.² Bityo rero ko n'ubwo gusubirishamo urubanza ku mpamvu z'akarengane atari ubujurire busanzwe, ntacyabuza ko ibikorwa mu bujurire byanakorwa kuri iyi nzira kubera ko ingaruka ari zimwe, cyane ko icyemezo cyafatwa kuri Kamanzi Charlotte na Magara Gahakwa John cyagira ingaruka ku bandi, bikaba bidashoboka ko Urukiko rubafatira icyemezo kandi batumviswe.

[26] Me Gashagaza Philbert na Me Nyirangirimana Astérie bavuze kandi ko ingingo ya 63 y'Itegeko N° 30/2018 ikwiye kumvikana hashingiwe ku murongo wafashwe n'Urukiko mu rubanza RS/INJUST/RC 00022/2018/SC rwaciwe ku wa 21/6/2019 haburana BUSORO Gervais na Busoro Mugunga, hakemeweza ko iyo urubanza rusabiwe gusubirwamo ku mpamvu z'akarengane nta nzitizi n'imwe ishobora gutangwa keretse iyo umuburanyi agaragaje ko hibeshywe ku bihe byo gusubirishamo urubanza ku mpamvu z'akarengane, ko rero Ubushinjacyaha butabirengaho ngo butange inzitizi.

[27] Basaba kandi Urukiko gushingira ku murongo wafashwe n'Urukiko rw'Ikirenga mu rubanza RS/INJUST/RP 00004/2018/SC rwaciwe ku wa 28/02/2019 haburana Ubushinjacyaha na Mbarushimana Jean de Dieu, Rutayisire Ruhinda Sabbat, harimo na Hotel des Milles Collines yaregeye indishyi, mu gice cya 64, aho rwavuze ko ababaye ababuranyi mbere, yaba uwahamwe n'icyaha, uwagihanaguweho n'uwaregeye indishyi hagomba gusuzumwa kuri bose, ahaba hagaragara akarengane n'icyagateje mu rwego rw'uburyozwe nshinjabyaha n'indishyi. Bakaba basanga uru rubanza ari igisubizo ku ngingo ya 63 yavuzwe haruguru.

[28] Me Kanyambo Diogène na Me Rutabingwa Athanase na Nzaramba Stevenson bunganira, bavuga ko bakurikije ibiteganyijwe n'ingingo ya 63 y'Itegeko N° 30/2018 basanga Nzaramba Stevenson agomba kuba umuburanyi muri uru rubanza kuko n'ubundi yari umuburanyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane. Bavuga ko mu gihe Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rugomba gusubirwamo aba atarinjira mu mizi yarwo ngo amenye ko hari abandi barenganye, akaba aricyo ingingo ya 63 y'Itegeko N° 30/2018 ryavuzwe haruguru yaje gukemura kugira ngo hatazagira uwo bigaragara ko yibagiranye.

[29] Bavuga kandi ko ibyo bishimangirwa mu rubanza RS/INJUST/RP 00004/2018/SC, aho rwemeje ko Rutayisire Ruhinda Sabbat ndetse n'uwaregeraga indishyi baba ababuranyi mu rubanza rwasubirishijwemo ku mpamvu z'akarengane ariko batarabisabye. Basobanura ko mu gika cya 64 cy'urwo rubanza, Rutayisire Ruhinda Sabbat wari wagizwe umwera, utari ufite impamvu yo kujya mu karengane, Urukiko rwasanze ari ngombwa ko ahamagarwa. Kubera izo mpamvu basaba ko Nzaramba Stevenson yaba umuburanyi muri uru rubanza. Bagaragaza ko uburyo ibyaha byakozwe, bigoye gutandukanya uwakoze icyaha n'icyitso, akaba ariyo mpamvu akarengane kasuzumwa muri rusange.

[30] Me Rutabingwa Athanase na Karake Mutsinzi Charles yunganira bavuga ko ingingo ya 55 y'Itegeko N° 30/2018 irebana n'impamvu zishingirwaho batanga ikirego gisaba gusubirishamo urubanza ku mpamvu z'akarengane, igika cya nyuma kigakumira utanga ikirego cy'akarengane

² M.D. Dalloz, Ainé, Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence, Tome Quatrième, Paris, Bureau de la Jurisprudence Générale du Royaume, 1846, p. 91, para. 593. «L'appel interjeté par l'une des parties profite aux autres dans les matières indivisibles, c'est-à-dire toutes les fois qu'il y a impossibilité absolue d'exécuter et le jugement rendu contre la partie non appelante et le jugement rendu en faveur de celle qui a appelé.»

atariyambaje izindi nzira z'ubujurire, naho iya 56 ikavuga igihe cyo gutanga ikirego, ko rero basanga izo ngingo zitandukanye n'ingingo ya 63 y'iryo Tegeko kuko yo ireba igihe cy'iburanisha ikavuga ko ababaye ababuranyi mu rubanza bose bahamagazwa.

[31] Me Bandora Alfred uhagarariye Mawadza Nhamo avuga ko yemeranya n'abamubanjirije, ariko yongeraho ko gusubirishamo urubanza ku mpamvu z'akarengane ari inzira y'ubujurire budasanze kandi bwemewe, asaba Urukiko gushingira ku ngingo ya 153 y'Itegeko n° 22/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo, n'iz'ubutegetsu iteganya ko ababuranyi batajuriye bashobora kugira ibyo basaba, rukemerera Mawadza Nhamo kuba umuburanyi muri uru rubanza kuko akarengane kabaye mu rubanza rwose.

[32] Me Bandora Alfred asobanura kandi ko n'ubwo bigaragara ko Mawadza Nhamo yishyuye ihazabu yaciwe atari uko yishimiye imikirize y'urubanza ku bimureba, ahubwo byatewe nuko yagombaga kujya kwivuriza hanze, agirana amasezerano na MINIJUST bemera kurekura urwandiko rwe rw'inzira.

UKO URUKIKO RUBIBONA

[33] Urukiko rurasanga abahamagawe muri uru rubanza bari mu byiciro bibiri: abasabye ko urubanza rwaciwe n'Urukiko Rukuru rusubirwamo ku mpamvu z'akarengane kandi bakabyemererwa, aribo Magara Gahakwa John na Kamanzi Charlotte; n'abahamagawe mu rubanza ariko batigeze basaba ko urwo rubanza rusubirwamo ku mpamvu z'akarengane, aribo Nzaramba Stevenson, Bamiika Rumanyika Herbert, Karake Mutsinzi Charles na Mawadza Nhamo. Aba bo mu cyiciro cya kabiri ni nabo basaba ko Urukiko rusuzuma imyanzuro yabo, rugahindura ibyemezo bari bafatiwe mu rubanza rwasabiwe gusubirwamo, bashingiye ku kuba ingingo ya 63 y'Itegeko N° 30/2018 ryo ku wa 29/04/2018 rigena ububasha bw'inkiko iteganya ko ababuranyi bose bahamagarwa mu rubanza, rugasubirwamo mu mizi bundi bushya. Mu ngingo zikurikira, harasuzumwa icyo guhamagarwa kw'ababuranyi bose, gusuzuma urubanza mu mizi, no kurusuzuma bundi bushya, bivuze.

[34] Ibyerekeye kuba abari ababuranyi bose mu rubanza rusabirwa gusubirwamo bahamagarwa, bikurura impaka zishingiye ku kumenya icyo abatarasabye ko urubanza rusubirwamo baba baje gukora mu gihe bo nta karengane bagaragaje ko bagiriwe. Ese bashobora kuririra ku karengane kagaragajwe n'abandi bakagaragaza akabo, batanyuze mu nzira ziteganywa n'ingingo za 58-61 z'Itegeko N° 30/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru ?

[35] Urukiko rusanga inzira y'akarengane ari inzira idasanze yemerewe umuburanyi warenganyijwe ku buryo bugaragarira buri wese, abisabye mu buryo no mu nzira biteganywa n'ingingo za 54,55,56 na 58 z'Itegeko N° 30/2018 ryo ku wa 29/04/2018, byemejwe n'inzeho zivugwa mu ngingo ya 58, zimaze kubisuzuma mu nzira ziteganywa n'ingingo za 59 na 62 z'iryo Tegeko ; ibyo bikaba binyuranye n'ibikorwa mu zindi nzira z'ubujurire kuko zo zidasaba ishungura ryihariye. Urukiko rusanga ababuranyi bataciye muri izo nzira badashobora guhabwa uburenganzira bwo kuririra ku isubirwamo ryasabwe n'abandi rikemerwa, ngo bagire ibyo basaba ko bihinduka ku rubanza batasabye ko rusubirwamo kuko ubwo burenganzira baba barabwibujije.

[36] Muri urwo rwego, ntibashinjwa mu rubanza kandi nta n'icyo bashobora kurusabamo ; bafata ijamba gusa babisabwe n'urukiko, cyangwa bo basabye kugira icyo basobanura ku bijyanye n'imikorere y'icyaha. Ibyo kandi si bishya mu mategeko kuko hakurikijwe ibiteganywa n'ingingo ya 190 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, uregera indishyi ashobora kujurira ku bireba indishyi gusa, Ubushinjacyaha bukaza

mu rubanza bugahabwa ijambo, ariko uburenganzira bufite bukagira aho bugarukira kuko budashobora gusaba ko hagira igihinduka ku gihano cyatanzwe.

[37] Urukiko rusanga icyemezo cyafatiwe abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, bakuririra ku busabe bw'abandi, gishobora guhinduka gusa iyo urukiko rusanze hari ubusobekerane ku byerekeye imikorere y'icyaha bahuriyeho n'abasabye gusubirishamo urubanza ku mpamvu z'akarengane, ku buryo icyemezo cyafatirwa abareze cyabagiraho ingaruka mu buryo bubafitiye inyungu.

[38] Ku bivugwa n'abasaba kuririra ku burenganzira bw'abasabye ko urubanza rusubirwamo ku mpamvu z'akarengane, ko iyo Perezida w'Urukiko rw'Ikirenga yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane rugomba kuburanishwa mu mizi, babishingiye ku byemejwe mu rubanza RS/INJUST/RC 00022/2018/SC rwa Busoro Gervais waburanaga na Busoro Mugunga Désiré, Twagirayezu Ildephonse na Mukankombe Chartine, Urukiko rusanga nta shingiro bifite. Koko rero muri urwo rubanza, Urukiko rwavuze ko kuba Perezida yemeje ko urubanza rusubirwamo ku mpamvu z'akarengane, bitabuza inteko iburanisha gusuzuma ibibazo bidasanzwe, nk'iyubahirizwa ry'ibihe n'ibindi, ikabifataho icyemezo.

[39] Uru Rukiko rurasanga ibibazo bidasanzwe bivugwa muri urwo rubanza bigomba kumvikana nk'ibibazo ndemyagihugu. Muri uru rubanza, impaka zishingiye ku kumenya uburenganzira mu rubanza bw' abatarasabye gusubirishamo urubanza ku mpamvu z'akarengane binyuze mu nzira ziteganywa n'amategeko yavuzwe haruguru, Urukiko rukaba rusanga icyo ari ikibazo kirebana n'ububasha bw'abaturanyi, kikaba ari ikibazo ndemyagihugu, kigomba gusuzumwa n'inteko iburanisha mbere yo kujya mu mizi y'urubanza.

[40] Ku byerekeye ibyo bavuga ko urubanza rugomba gusubirwamo bundi bushya, rugasa n'aho rutangiye ku rwego rwa mbere, bityo abarubayemo abaturanyi bagasubirana uburenganzira bari bafite icyo gihe, Urukiko rusanga nabyo nta shingiro bifite. Koko rero, nk'uko uru Rukiko rwabitanzeho umurongo, gusubiramo urubanza bundi bushya ntibigomba kumvikana nko kurusuzuma hatitawe ku manza zabaye mbere y'uko rusabirwa gusubirwamo ku mpamvu z'akarengane, bigasa n'aho zose ziteshejwe agaciro. Urukiko rwasobanuye ahubwo ko imbibi z'ikiburanwa mu rubanza rwasabiwe gusubirwamo ku mpamvu z'akarengane, zigenwa n'icyaburanywe mu rwego rwa mbere, icyaburanywe mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane, n'imyanzuro y'abasabye ko urubanza rusubirwamo bamaze kubyemererwa na Perezida w'Urukiko rw'Ikirenga. Uwo murongo watanzwe n'uru Rukiko mu rubanza RS/INJUST/RC 00024/2018/SC haburana Ngizweninshuti Albert na Muhima Giovanni, rwaciwe ku wa 21/02/2020.

[41] Ku bijyanye n'urubanza RS/INJUST/RP 00004/2018/SC rwa Mbarushimana Jean de Dieu abasabye kuririra ku busabe bw'abandi bemeza ko rwatanze umurongo ubibahera uburenganzira, Urukiko rusanga ibyo atari ukuri kuko hatasuzumwe ikibazo cyo kumenya niba abatarasabye ko urubanza rusubirwamo ku mpamvu z'akarengane bakuririra ku busabe bw'abandi bagasaba Urukiko gusuzuma akarengane ku bibareba. Rusanga ahubwo icyo akarengane kari gashingiyeho, ari ukuba uwasabye ko urubanza rusubirwamo yarahanwe wenyine kandi hari abandi bagize uruhare mu ikorwa ry'icyaha batakurikiranwe cyangwa batahanwe, bigatuma yikorera wenyine umuzigo w'indishyi. Urukiko rwemeje ko hahamagazwa gusa abarubayemo abaturanyi mbere, aribo Rutayisire Ruhinda Sabbat nawe wari ukurikiranywe n'Ubushinjacyaha, hamwe na *Compagnie Rwandaise d'Hotellerie et de Tourisme, Hotel des Mille Collines* yaregeraga indishyi.

[42] Urukiko rurasanga n'ubwo Rutayisire Ruhinda Sabbat n'waregeraga indishyi bahamagajwe muri urwo rubanza, rukabaha ijambo kandi batarasabye ko rusubirwamo ku mpamvu z'akarengane, rutarigeze rugira icyemezo rufata ku bibareba, ahubwo umwanzuro wafashwe gusa k'uwasabye ko

urubanza rusubirwamo ku mpamvu z'akarengane ariwe Mbarushimana Jean de Dieu. Bityo rero, kuba Nzaramba Stevenson, Bamika Rumanyika Herbert, Karake Mutsinzi Charles na Mawadza Nhamo n'abunganizi babo bashingira kuri urwo rubanza bagasaba ko hagira ibyemezo bibafatirwa, bikaba nta shingiro bifite.

[43] Rushingiye ku bisobanuro byatanzwe haruguru, Urukiko rusanga ababaye ababuranyi mu rubanza rusabirwa gusubirwamo ku mpamvu z'akarengane baruhamagarwamo, Urukiko rugashobora kugira icyo rubabaza cyafasha mu micire y'urubanza rusubirishwamo cyangwa nabo bakaba bagira amakuru batanga, ariko bakaba badashobora gusaba ko urwo rubanza ruhinduka ku byerekeye ibyemezo bari bafatiwe, keretse rusanze hari ubusobekerane (*indivisibilité/indivisibility*) bw'ibiburanwa ku buryo rudashobora gufata icyemezo ku busabe bw'abasabye ko urubanza rusubirwamo bitagize ingaruka ku byemezo byafatiwe abatarabisabye kandi ku buryo bubafitiye inyungu.

III. ICYEMEZO CY'URUKIKO

[44] Rwemeje ko inzitizi yatanzwe n'Ubushinjacyaha ifite ishingiro.

[45] Rwemeje ko akarengane kagomba gusuzumwa mu rubanza RPA 00669/2017/HC/KIG - RPA 00680/2017/HC/KIG - RPA 00684/2017/HC/KIG - RPA 00685/2017/HC/KIG - RPA00686/2017/HC/KIG - RPA 00745/2017/HC/KIG rwaciwe n'Urukiko Rukuru ku wa 10/12/2018 ari akareba Magara Gahakwa John na Kamanzi Charlotte gusa, rukaba rwafata icyemezo kubireba abandi ari uko rusanze hari ubusobekerane bw'ibiburanwa.

[46] Rwemeje ko iburanisha ry'uru rubanza rizakomeza ku wa 18/01/2021.